

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Advanced Television Systems )  
and Their Impact upon the Existing )  
Television Broadcast Service )

MM Docket No. 87-268

**PETITION FOR RECONSIDERATION OR CLARIFICATION**

KB Prime Media, LLC ("KB"), pursuant to Section 1.429 of the Commission's Rules,<sup>1/</sup> hereby files this Petition for Reconsideration of the Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders issued in the above-captioned proceeding.<sup>2/</sup> KB is an applicant for a number of new television facilities and is therefore an interested party with respect to the portions of the Second MO&O dealing with applications for new stations within the NTSC "Freeze Zone".<sup>3/</sup> KB requests the Commission to either reconsider or clarify those portions of the Second MO&O to the extent that the Second MO&O does not

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<sup>1/</sup> 47 C.F.R. § 1.429.

<sup>2/</sup> See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, FCC 98-315, MM Docket No. 87-268 (rel. December 18, 1998) ("Second MO&O").

<sup>3/</sup> KB has an interest in applications pending for the following NTSC channels: Channel 35, Vicksburg, MS; Channel 55, Gulf Shores, AL; Channel 41, Alexandria, LA; Channel 61, Gainesville, FL; Channel 35, Tupelo, MS; Channel 62, Hammond, LA; Channel 56, Wiggins, MS; Channel 43, El Dorado, AK; Channel 51, Jackson, MS; and Channel 24, Tallahassee, FL. KB is also the licensee of WSWB(TV), Scranton, PA and the approved assignee of WFXU(TV), Live Oak, FL.

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provide for the Commission to consider on a case-by-case basis individual short-spacing waiver requests by pending applicants for new NTSC stations in areas covered by the 1987 Freeze Order.<sup>4/ 5/</sup>

### DISCUSSION

In the Second MO&O, the Commission established that pending applicants for new NTSC stations in freeze areas can pursue their applications only if their proposed stations would not conflict with NTSC or DTV stations, DTV allotments, authorized or requested increases in DTV allotment facilities, and proposals for new or modified DTV allotments.<sup>6/</sup> The Commission announced that it would establish a window during which pending applicants that conflict with DTV stations can: (1) file a petition for rulemaking to change the NTSC channel allotment; or (2) amend their freeze-waiver applications to eliminate such conflicts.

The concerns of KB arise from the fact that the Second MO&O is silent as to how the petitions for rulemaking seeking replacement channels will be processed. Under traditional Commission rulemaking practice, new allotments are made based on mileage separation requirements, and new allotments will not be made unless there is a fully spaced site at which such

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<sup>4/</sup> See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Order, RM-5811, 76 RR 2d 843 (rel. July 17, 1987) ("1987 Freeze Order").

<sup>5/</sup> To the extent that the Commission can clarify the issues set forth herein in a manner so as to address the concerns of Petitioner in the context of a Public Notice issued in connection with the announcement of the filing window for requests for substitute channels for Freeze Zone channels precluded by DTV allotments, this petition would be moot and could be dismissed.

<sup>6/</sup> Second MO&O at ¶ 40.

allotments can be made.<sup>7/</sup> Similarly, in the DTV Allotment Order,<sup>8/</sup> the Commission has established rules which require that future new digital television allotments be made on the basis of mileage separation rules. If such strict mileage separation rules are applied to applicants such as KB who need to locate substitute channels for ones for which they have applications pending, these applicants may be precluded from locating such substitute channels, and thus the new broadcast voices which they seek to establish may be precluded. KB submits that, in light of prior Commission precedent in the digital allocation process, such a strict application of the mileage separation rules is contrary to both the public interest and the precedent established by the Commission.

The Commission has already recognized that the initial process of converting analog stations to digital required, in order to accommodate all stations, that strict mileage separation requirements not be observed. Thus, the initial digital allotments for existing television stations were made not based on mileage separation requirements, but instead based upon interference considerations. In the Sixth Reconsideration Order (the "Allotment Reconsideration Order")<sup>9/</sup>, the Commission stated: "Engineering criteria rather than spacing distances were used to develop the initial DTV Table and are to be used with regard to any changes for existing stations."<sup>10/</sup> The logic of this interference-based process for analog applications pending at the time of the adoption

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<sup>7/</sup> See 47 C.F.R. § 73.610.

<sup>8/</sup> Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Report and Order, FCC 97-115, MM Docket No. 87-268 (rel. April 21, 1997) ("Allotment Order").

<sup>9/</sup> Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, FCC 98-24, MM Docket No. 87-268 (rel. Feb. 23, 1998) ("Allotment Reconsideration Order").

<sup>10/</sup> Id. ¶ 157.

of the digital allocations was followed in the Channels 60-69 proceeding, where the Commission specifically stated with respect to applicants for new stations in TV channels 60-69, “we will consider individual short-spacing waiver requests on a case-by-case basis in conjunction with affording an opportunity for amendment of applications to seek channels below 60.”<sup>11/</sup>

The Commission has not offered an explanation, nor could it, for why pending applicants for NTSC stations in freeze areas below channel 60 should be treated less favorably than pending applicants for NTSC stations in channels 60-69. As with applicants for NTSC stations in channels 60-69, applications for NTSC stations below 60 will be dismissed if they conflict with DTV allotments.<sup>12/</sup> Because these applicants are in the identical regulatory status, the Commission must treat them in the same manner. Therefore, the Commission should afford pending applicants for NTSC stations in freeze areas below channel 60 the same flexibility it has afforded applicants for stations on channels 60-69, allowing substitute channels based on interference considerations rather than mileage separations. Allowing such flexibility will serve the public interest by allowing the public to receive additional television stations, thereby increasing the diversity of voices, and will further avoid having to dismiss many NTSC applicants who have already expended significant sums in preparing and prosecuting their applications for new stations.

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<sup>11/</sup> Reallocation of Television Channels 60-69, the 746-806 MHZ Band, Memorandum Opinion and Order, ET Docket No. 97-157, ¶ 11 (Oct. 9, 1998); see also Reallocation of Television Channels 60-69, the 746-806 MHZ Band, Report and Order, ET Docket No. 97-157, ¶ 40 (Jan. 6, 1998).

<sup>12/</sup> Second MO&O at ¶ 42 (“After the window has ended, freeze waiver applications will be dismissed if they conflict with DTV stations, they have not been amended to remove the conflict, and their requested allotment is not the subject of a pending petition for rule making seeking an alternate channel.”).

**CONCLUSION**

Based on the foregoing, KB respectfully requests the Commission to reconsider or clarify the Second MO&O to provide for the Commission to consider on a case-by-case basis individual channel change requests by pending applicants for new NTSC stations in areas covered by the 1987 Freeze Order.

Respectfully submitted,

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